

From: [Chang, Lisa](#)
To: [Bonifaci, Angela](#)
Subject: FW: Meeting with Swinomish
Date: Tuesday, June 16, 2015 5:04:00 PM
Attachments: [RE Question about authority to intervene on LO subaward funding decision.msg](#)
[FW Meeting time wSwinomish.msg](#)
[RE Swinomish FY14 Proposal.msg](#)
Importance: High

Angela,

See message below from Tiffany.

Tony has not yet come up with any additional regulatory support for pushing back on Swinomish (I will check again with him), and I have summarized our position/thinking in (a) our comments on the Swinomish proposal (attached), and (2) in an e-mail to Tony. Larry had also provided some additional material from the Skagit River Chinook Recovery Plan (attached) where he laid out what he views as support for his work.

Finally, there is material in the Action Agenda speaking to the desire to work with the agricultural community. This includes:

- NTA A3.2, "Agricultural lands. As described earlier, since 1950 we have lost more than half of the farmland in the Puget Sound region. Effectively preserving agricultural land will involve tackling a complex set of interrelated issues including real work to ensure that agriculture continues to be a viable, and vibrant, industry in Puget Sound"
- "Work directly with farmers to better understand ecological and economic issues and viable solutions" (p. 26, under A3)
- NTA A.3.2.2 Agriculture strategy. "The Partnership, in collaboration with WSDA, Ecology, WSCC, and agricultural partners has convened an advisory committee to consider development of a Puget Sound agricultural strategy. The strategy will identify a) needs for maintaining the health of the industry b) key areas where the agricultural industry can contribute to the protection and restoration of Puget Sound and c) challenges to be addressed for achieving these goals and implementing a successful strategy. This near term action could be further amended or integrated into the regional funding strategy as appropriate."

I think this is about as robust an argument we have, unless Tony comes up with some very specific regulatory language. Do you think we can meet with him on Thursday?

Lisa

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Tuesday, June 16, 2015 4:17 PM
To: Chang, Lisa
Subject: Meeting with Swinomish

Hi Lisa,

I wanted to check back in with you regarding the rescheduling of Swinomish's meeting. I'm getting some pressure from Larry to reschedule as soon as possible. Would you and Angela be available on Thursday? Both Fran and Larry are available that day. They may also be available on Friday, but I would need to double-check.

Thanks,
Tiffany

From: Chang, Lisa [mailto:Chang.Lisa@epa.gov]
Sent: Wednesday, June 10, 2015 8:27 AM
To: Larry Wasserman; Tiffany Waters; Bonifaci, Angela
Subject: Reschedule this morning's meeting
Importance: High

Tiffany and Larry,

My apologies, but we would like to reschedule this morning's meeting. We'd like to better examine all the material before us, and also involve our grants specialist, in this discussion to ensure we make the best use of everyone's time.

We will send some available times for us shortly. Again, our apologies, but we want to ensure we are fully prepared for the discussion.

Lisa

From: [Tiffany Waters](#)
To: [Chang, Lisa](#)
Subject: FW: Meeting time w/Swinomish
Date: Tuesday, June 09, 2015 3:08:42 PM
Attachments: [Skagit Chinook Plan elements.docx](#)

Hey Lisa,

I'm realizing that I didn't provide Larry's response document that you and I briefly discussed. I'm sorry about that. Larry provided me this document in initial response to the comments you provided on their FY14 proposal. It excerpts portions of their Chinook Recovery Plan that speak to the need for a regulatory framework that ensures habitat protection.

I may be sending this a bit too late for tomorrow's discussion, in which case I apologize, but I'm sure we'll touch on this issue tomorrow.

Thanks,
Tiffany

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Tuesday, June 09, 2015 12:49 PM
To: 'Chang, Lisa'
Subject: RE: Meeting time w/Swinomish

Thanks, Lisa. I'm sorry for not getting back to you about this. I thought that Fran was going to give Dan a call to ask him if he would actually be willing to be on the call, but I think she might not have done that yet. I wanted to reach out to you to see if you would be willing to talk to Dan and see if he would be willing/available for tomorrow's meeting.

I'm in the rest of the day, so definitely feel free to give me a call.

Thanks,
Tiffany

From: Chang, Lisa [mailto:Chang.Lisa@epa.gov]
Sent: Thursday, June 04, 2015 3:26 PM
To: Tiffany Waters
Subject: RE: Meeting time w/Swinomish

Okay – and finally, I was mistaken – Dan will not be participating in next week's meeting with Larry; it will just be Angela, who is our acting program manager now, and myself.

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Thursday, June 04, 2015 3:25 PM
To: Chang, Lisa
Subject: RE: Meeting time w/Swinomish

Great, thanks! And sounds good for Makah. As soon as you know when on the 15 or 16 works, just let me know.

From: Chang, Lisa [mailto:Chang.Lisa@epa.gov]
Sent: Thursday, June 04, 2015 3:09 PM
To: Tiffany Waters
Subject: RE: Meeting time w/Swinomish

Oh – and I forgot to say that this time slot does work for us (it will be Dan, Angela, and myself).
Thank you very much for coordinating this!

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Thursday, June 04, 2015 2:06 PM
To: Chang, Lisa
Subject: Meeting time w/Swinomish

Hi Lisa,

I just heard back from Fran and Larry and the best time to meet with Dan and yourself would be Wednesday, the 10th from 8:30-9:30am. I just checked our conference line and it's available during that time. If that time works for you both, I'll reserve that line (b) (6).

Thank you!
Tiffany

[Tiffany Waters](#)
Puget Sound Recovery Projects Coordinator
6730 Martin Way E., Olympia, WA 98516
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First is a public that recognizes the importance of salmon habitat protection, and that does not condone actions by others that do harm to these resources. This sentiment should be nurtured through a vigorous public information effort, and by providing the technical information to assist landowners and others in their efforts to comply with existing regulations

A second factor and one that needs to be implemented concurrently with the first step is an unambiguous regulatory framework that insures that the habitat needs of the fisheries resource are fully protected, either through avoidance of impacts or through the full mitigation of unavoidable impacts. The regulations should provide sufficient clarity to landowners and other project proponents about what standards need to be met, and what actions are unacceptable. These regulations must be applied equally to all, with assistance from implementing agencies so that people can understand the necessity of the regulated actions, and how they can comply

Protection and restoration of habitat critical to maintaining Chinook production and productivity is dependent on seven factors:

- 1) Application of best available science and implementation of adaptive management practices to deal with uncertainty
- 2) Local collaborative planning that fully incorporates the needs of salmon in the recovery planning process
- 3) Adequate regulatory safeguards that meet the required certainty of fish and habitat protection
- 4) Adequate technical assistance to aid parties with the compliance of regulations
- 5) The vigorous enforcement of these regulatory safeguards
- 6) Adequate incentives to promote voluntary involvement of the public in the restoration and protection of salmon habitat
- 7) A desire on the part of the public and elected officials to provide for those habitat elements necessary to sustain salmon populations sufficient to meet the recovery goals

Governor Locke's Extinction is not an Option (1999) called for a collaborative process to develop an agricultural strategy within three years, and delineated default actions if that strategy was not developed among interested parties. These default actions include a regulatory framework in the form of an Agricultural Practices Act, a Riparian Protection Act, or the mandatory use of Farm Plans based on Best Management Practices (BMP) based on Best Available Science (BAS). The commitment to enforce these regulations, is a necessary component to protect water quality within the Skagit Basin. A Water Quality based agricultural strategy has yet to be developed

Recommendation 21

Assist and support development of Total Maximum Daily Load (TMDL)s for each of the Chinook streams listed on the 303(d) list in the Skagit River Basin. Identify and implement the measures necessary to meet water quality standards. These measures should become part of either local or state regulations to ensure their implementation.

Recommendation 24

The Shorelines Management Act currently exempts agricultural practices, which inadequately protects essential Chinook habitat. Protecting this habitat requires modification of the Shorelines

Management Act to eliminate the exemption for agricultural practices, or to develop alternative mechanisms that provide equivalent levels of protection

Recommendation 27

The Clean Water Act (CWA) does not adequately provide for non-point source water quality protection. Adequate protection requires modification of the CWA or establishment of other mechanisms that provide for levels of protection equivalent to those required for point sources of pollution.

Recommendation 44

Adopt by regulation the stream buffer measures consistent with the BAS. Include a provision that site-specific alterations are possible, based on information that demonstrates a comparable level of resource protection can be attained

From: [Chang, Lisa](#)
To: [Fournier, Tony](#)
Cc: [Bonifaci, Angela](#)
Subject: RE: Question about authority to intervene on LO subaward funding decision
Date: Wednesday, June 10, 2015 9:06:00 AM
Importance: High

Hi Tony,

Thanks for checking on this, and we would really appreciate if you could look into this more later this week. We postponed our conversation with NWIFC and its subawardee, the Swinomish Tribe, until we've lined up what policy/regulatory support we do have.

We'd really appreciate your further researching this as well as possibly participating in a call with NWIFC once we've completed our internal research.

In the meantime, I'll put together internal discussion points about the activities we feel, from a programmatic perspective, are not acceptable. I will base my discussion points on what I understand from your note to be what we have to work with in terms of policy at this point. That is, we have EPA's "Substantial Involvement" T&C (#5 below, copied from the original award to NWIFC). Second, we have the "Subawards" T&C (#16 below, again, copied from the original award), as well as the Agency subaward policy that it cites (<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>). And finally, we have NWIFC's RFP language (the RFP it uses to solicit proposals for subawards), which describes the goals of the funding and eligible subaward activities.

Anything else you are able to find would be much appreciated. I will run my discussion points by you and Angela later this week.

Lisa

5. EPA's Substantial Involvement

EPA will be substantially involved in this project by participating in the following activities: (1) Within the first nine months of the project, EPA reserves the right to negotiate work plan and budget; (2) monitor the project management and execution throughout the assistance agreement's project and budget period; (3) provide technical assistance and coordination as requested or needed by the recipient; and (4) review and approve technical deliverables.

16. Subawards

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;

- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

From: Fournier, Tony

Sent: Wednesday, June 10, 2015 7:59 AM

To: Chang, Lisa

Cc: Bonifaci, Angela

Subject: RE: Question about authority to intervene on LO subaward funding decision

Sorry, Lisa, but I have not been able to find anything that gives us clear authority to dictate how they select the sub-awardees. The new policy that's in draft may give us more room, however, from the perspective of objectives/tasks in their subaward proposals, I think you have some level of discretion to address work that does not meet the criteria of the program. You may have to beef up the substantial involvement T&C in your agreement to better define a review process for proposals.

I suggest you refer to the current subaward policy for guidance until we can do more research. Sorry! No silver bullet that I can provide at present.

I should have more time later in the week to look more closely at the options.

Tony Fournier

Acting Manager

U.S. EPA Region 10, M/S OMP-173
Grants and Interagency Agreements Unit
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
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From: Chang, Lisa

Sent: Monday, June 08, 2015 6:05 PM

To: Fournier, Tony

Subject: FW: Question about authority to intervene on LO subaward funding decision

Importance: High

Hi Tony,

Just checking in on this question – we will be meeting with NWIFC and its subawardee on Wednesday morning at 8:30 am and would love to have some backup information on our authority to intervene. NWIFC has given us a heads up that the subawardee is very curious as to what specific authority EPA has to intervene.

Thanks so much – (b) (6)

Lisa

From: Chang, Lisa

Sent: Tuesday, June 02, 2015 11:12 AM

To: Fournier, Tony

Cc: Opalski, Dan; Downs, Yvette; Bonifaci, Angela; Bonifacino, Gina

Subject: Question about authority to intervene on LO subaward funding decision

Importance: High

Hi Tony,

To follow up on our hallway discussion when I bumped into you up here a few minutes ago, we'd like to know what our authority is to intervene on an LO funding decision. Here is the situation:

- Under its cooperative agreement with us, the NWIFC LO annually requests proposals from Puget Sound tribes and tribal consortia for projects to protect and restore Puget Sound.
- In 2014, as in other years, NWIFC issued its annual RFP, which includes the following statement of purpose (my emphasis):

"The purpose is to provide sub-awards to 19 Federally-recognized Indian Tribes located within the greater Puget Sound Basin, and any authorized consortium of these eligible Tribes, to implement projects that are of high Tribal priority and that are identified in or consistent with the Action Agenda, such as activities in existing recovery plans, which will contribute directly to the restoration and protection of Puget Sound. Types of activities to be funded under the subaward process set up under this Cooperative Agreement can encompass any work for which there is a strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts..."
- The Swinomish Tribe has submitted a proposal for funding under this 2014 RFP; this project is the continuation of a project that has been funded for the past several years under the NWIFC LO program. Briefly, the purpose of the project is to "first collect information on public perceptions of water quality in the Skagit Basin, and then to conduct a public education effort that would lead to improved practices and regulatory certainty that instream resources would be protected, consistent with the Skagit Chinook Recovery Plan."
- We have reviewed and commented on the project in previous years. We have expressed concern with other aspects of the proposal in the past, but the subawardee has addressed

the concerns and the project has proceeded.

- However, with the proposal for 2014 funds, in conjunction with reviewing some of the products produced in earlier years of the award, EPA staff now believe that the proposed work does not meet the stated purpose of the RFP and may even undermine it. Specifically, we believe that the project as actually implemented is not “consistent with the Action Agenda” and can no longer demonstrate “a strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts.”
- **Our question to you is this: what is EPA’s authority to direct the NWIFC LO not to fund this proposal, or to require significant changes to the proposal, or to terminate the project, in light of the direction this project has taken?**

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Many thanks for any regulatory or policy citations you can point us to,

Lisa

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From: [Chang, Lisa](#)
To: [Tiffany Waters](#); [Scott Williamson](#)
Cc: [Bonifacino, Gina](#); [Bonifaci, Angela](#)
Subject: RE: Swinomish FY14 Proposal
Date: Tuesday, May 19, 2015 5:05:00 PM

Hi Tiffany,

Thanks for the opportunity to review this proposal. Below is some initial feedback, as discussed on the phone today.

Here is an initial comment:

- 1) The proposal cites the following passage from the Skagit Chinook Recovery Plan (SCRП):

“Successful habitat protection depends on three important components. First is a public that recognizes the importance of salmon habitat protection, and that does not condone actions by others that do harm to these resources. This sentiment should be nurtured through a vigorous public information effort, and by providing the technical information to assist landowners and others in their efforts to comply with existing regulations. Technical and financial resources should also be made available to those who voluntarily want to do even more to protect and restore salmon habitat if they so choose. Providing people with the information to make informed decisions that will be protective of salmon habitat when working in and around streams is the first step towards habitat protection. To summarize, providing people the tools to “do the right thing” capitalizes on the vast majority of the public that wants to provide for a future for Skagit River Chinook. “

To me this suggests a public education effort that reaches and educates not only the general public, but all those “working in and around streams” – the agricultural sector as well. It suggests that the aspiration is a collaborative effort, where those “working in and around streams” and the general public are aware of, and have the tools to, protect and restore salmon habitat.

- 2) However, on pp. 5-6, the workplan suggests that the proposed outreach/education work has shifted away from the approach that seems to be laid out in the SCRП and no longer involves engaging/educating all those who “work in and around streams”: The current goal of the proposed work is to “raise awareness in both the public and decision makers about accountability in the agriculture industry where non-point source pollution and our state’s water resources are concerned...” and this would be done through “highly visible distribution channels...earned media stories in relevant print, television, radio and online channels...18 ads in Washington newspapers...and 4 billboard displays in King, Skagit, and Whatcom counties.”

We would like to further discuss the shift in emphasis between the original narrative and it’s solid basis in the SCRП and the actual direction of this project as we understand it from today’s conversations and the FY14 proposal and would appreciate it if we could have a conversation

with NWIFC and the subawardee before work proceeds much further.

Thanks very much,

Lisa

From: Tiffany Waters [mailto:twaters@nwifc.org]

Sent: Wednesday, May 06, 2015 10:19 AM

To: Chang, Lisa; Scott Williamson

Subject: Swinomish FY14 Proposal

Hello Lisa and Scott,

Enclosed is Swinomish's second FY14 proposal for your review. If you have any questions, please don't hesitate to call or email.

Thanks!

Tiffany

[Tiffany Waters](#)

Puget Sound Recovery Projects Coordinator

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(p) 360.528.4318